

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

(F) any other losses suffered by the victim as a proximate result of the offense.

(4) ORDER MANDATORY.—(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) DEFINITION.—For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

(Added Pub. L. 103-322, title IV, §40113(a)(1), Sept. 13, 1994, 108 Stat. 1904; amended Pub. L. 104-132, title II, §205(b), Apr. 24, 1996, 110 Stat. 1231.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-132, §205(b)(1), inserted “or 3663A” after “3663”.

Subsec. (b)(1). Pub. L. 104-132, §205(b)(2)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The order of restitution under this section shall direct that—

“(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court, pursuant to paragraph (3); and

“(B) the United States Attorney enforce the restitution order by all available and reasonable means.”

Subsec. (b)(2). Pub. L. 104-132, §205(b)(2)(B), struck out “by victim” after “Enforcement” in heading and amended text generally. Prior to amendment, text read as follows: “An order of restitution also may be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.”

Subsec. (b)(4)(C), (D). Pub. L. 104-132, §205(b)(2)(C), struck out subpars. (C) and (D), which related to court's consideration of economic circumstances of defendant in determining schedule of payment of restitution orders, and court's entry of nominal restitution awards where economic circumstances of defendant do not allow for payment of restitution, respectively.

Subsec. (b)(5) to (10). Pub. L. 104-132, §205(b)(2)(D), struck out pars. (5) to (10), which related, respectively, to more than 1 offender, more than 1 victim, payment schedule, setoff, effect on other sources of compensation, and condition of probation or supervised release.

Subsec. (c). Pub. L. 104-132, §205(b)(3), (4), redesignated subsec. (f) as (c) and struck out former subsec. (c) relating to proof of claim.

Subsecs. (d), (e). Pub. L. 104-132, §205(b)(3), struck out subsecs. (d) and (e) which read as follows:

“(d) MODIFICATION OF ORDER.—A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.

“(e) REFERENCE TO MAGISTRATE OR SPECIAL MASTER.—The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.”

Subsec. (f). Pub. L. 104-132, §205(b)(4), redesignated subsec. (f) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 211 of title II of Pub. L. 104-132 provided that: “The amendments made by this subtitle [subtitle A (§§201-211) of title II of Pub. L. 104-132, see Short Title of 1996 Amendment note set out under section 3551 of this title] shall, to the extent constitutionally permissible, be effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment of this Act [Apr. 24, 1996].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3563, 3613, 3664 of this title.

CHAPTER 110—SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

Sec.

2251. Sexual exploitation of children.

2251A. Selling or buying of children.

2252. Certain activities relating to material involving the sexual exploitation of minors.

2252A. Certain activities relating to material constituting or containing child pornography.

2253. Criminal forfeiture.

2254. Civil forfeiture.

2255. Civil remedy for personal injuries.

2256. Definitions for chapter.

2257. Record keeping requirements.

2258. Failure to report child abuse.

2259. Mandatory restitution.

2260. Production of sexually explicit depictions of a minor for importation into the United States.

AMENDMENTS

1996—Pub. L. 104-294, title VI, §601(i)(2), Oct. 11, 1996, 110 Stat. 3501, redesignated item 2258, relating to production of sexually explicit depictions of a minor, as 2260.

Pub. L. 104-208, div. A, title I, §101(a) [title I, §121[3(b)]]], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-30, added item 2252A.

1994—Pub. L. 103-322, title IV, §40113(b)(2), title XVI, §160001(b)(1), Sept. 13, 1994, 108 Stat. 1910, 2037, added items 2258, relating to production of sexually explicit depictions of a minor, and 2259.

1990—Pub. L. 101-647, title II, §226(g)(2), Nov. 29, 1990, 104 Stat. 4808, inserted “AND OTHER ABUSE” after “EXPLOITATION” in chapter heading and added item 2258.

1988—Pub. L. 100-690, title VII, §§7512(c), 7513(b), Nov. 18, 1988, 102 Stat. 4487, 4488, added items 2251A and 2257.

1986—Pub. L. 99-500, §101(b), [title VII, §703(b)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-75, and Pub. L. 99-591, §101(b) [title VII, §703(b)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-75, added item 2255 and redesignated former item 2255 as 2256.

1984—Pub. L. 98-292, §7, May 21, 1984, 98 Stat. 206, added items 2253 and 2254 and redesignated former item 2253 as 2255.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2426, 3156, 3592, 3663, 4042 of this title; title 19 section 1583; title 42 section 14135a; title 47 section 230.

§ 2251. Sexual exploitation of children

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (d), if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct shall be punished as provided under subsection (d) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(c)(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering—

(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct;

shall be punished as provided under subsection (d).

(2) The circumstance referred to in paragraph (1) is that—

(A) such person knows or has reason to know that such notice or advertisement will be transported in interstate or foreign commerce by any means including by computer or mailed; or

(B) such notice or advertisement is transported in interstate or foreign commerce by any means including by computer or mailed.

(d) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title or imprisoned not less than 10 years nor more than 20 years, and¹ both,

but if such person has one prior conviction under this chapter, chapter 109A, or chapter 117, or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 30 years, but if such person has 2 or more prior convictions under this chapter, chapter 109A, or chapter 117, or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 30 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.

(Added Pub. L. 95-225, §2(a), Feb. 6, 1978, 92 Stat. 7; amended Pub. L. 98-292, §3, May 21, 1984, 98 Stat. 204; Pub. L. 99-500, §101(b) [title VII, §704(a)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-75, and Pub. L. 99-591, §101(b) [title VII, §704(a)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-75; Pub. L. 99-628, §§2, 3, Nov. 7, 1986, 100 Stat. 3510; Pub. L. 100-690, title VII, §7511(a), Nov. 18, 1988, 102 Stat. 4485; Pub. L. 101-647, title XXXV, §3563, Nov. 29, 1990, 104 Stat. 4928; Pub. L. 103-322, title VI, §60011, title XVI, §160001(b)(2), (c), (e), title XXXIII, §330016(1)(S)-(U), Sept. 13, 1994, 108 Stat. 1973, 2037, 2148; Pub. L. 104-208, div. A, title I, §101(a) [title I, §121[4]], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-30; Pub. L. 105-314, title II, §201, Oct. 30, 1998, 112 Stat. 2977.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-314, §201(a), inserted “if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer,” before “or if”.

Subsec. (b). Pub. L. 105-314, §201(b), inserted “, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer,” before “or if”.

Subsec. (d). Pub. L. 105-314, §201(c), substituted “, chapter 109A, or chapter 117” for “or chapter 109A” in two places.

1996—Subsec. (d). Pub. L. 104-208 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title, imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this chapter or chapter 109A, such individual shall be fined under this title, imprisoned not less than five years nor more than 15 years, or both. Any organization which violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.”

1994—Pub. L. 103-322, §330016(1)(S)-(U), which directed the amendment of this section by substituting “under this title” for “not more than \$100,000”, “not more than \$200,000”, and “not more than \$250,000”, could not be executed because those phrases did not appear in text subsequent to amendment of subsec. (d) by Pub. L. 103-322, §160001(b)(2). See below.

¹ So in original. Probably should be “or”.

Subsec. (d). Pub. L. 103-322, §160001(e), inserted “, or attempts or conspires to violate,” after “violates” in two places.

Pub. L. 103-322, §160001(c), substituted “conviction under this chapter or chapter 109A” for “conviction under this section”.

Pub. L. 103-322, §160001(b)(2)(C), substituted “fined under this title” for “fined not more than \$250,000” in penultimate sentence.

Pub. L. 103-322, §160001(b)(2)(B), substituted “fined under this title,” for “fined not more than \$200,000, or” before “imprisoned not less than five years”.

Pub. L. 103-322, §160001(b)(2)(A), substituted “fined under this title,” for “fined not more than \$100,000, or” before “imprisoned not more than 10 years”.

Pub. L. 103-322, §60011, inserted at end “Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.”

1990—Subsec. (a). Pub. L. 101-647 substituted “person to engage in,” for “person to engage in,,”.

1988—Subsec. (c)(2)(A), (B). Pub. L. 100-690 inserted “by any means including by computer” after “commerce”.

1986—Subsec. (a). Pub. L. 99-628, §§2(1), (3), inserted “, or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in,” after “assist any other person to engage in,” and substituted “subsection (d)” for “subsection (c)”.

Subsec. (b). Pub. L. 99-628, §2(2), substituted “subsection (d)” for “subsection (c)”.

Subsecs. (c), (d). Pub. L. 99-628, §2(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

Pub. L. 99-500 and Pub. L. 99-591 substituted “five years” for “two years” in subsec. (c).

1984—Subsecs. (a), (b). Pub. L. 98-292, §3(1), (2), substituted “visual depiction” for “visual or print medium” in three places and substituted “of” for “depicting” before “such conduct”.

Subsec. (c). Pub. L. 98-292, §3(3)–(6), substituted “individual” for “person” in three places, “\$100,000” for “\$10,000”, and “\$200,000” for “\$15,000”, and inserted “Any organization which violates this section shall be fined not more than \$250,000.”

SHORT TITLE OF 1996 AMENDMENT

Section 101(a) [title I, §121] of div. A of Pub. L. 104-208 provided in part that: “This section [enacting section 2252A of this title, amending this section, sections 2241, 2243, 2252, and 2256 of this title, and section 2000aa of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 2241 of this title] may be cited as the ‘Child Pornography Prevention Act of 1996’.”

SHORT TITLE OF 1990 AMENDMENT

Section 301(a) of title III of Pub. L. 101-647 provided that: “This title [amending sections 1460, 2243, 2252, and 2257 of this title and enacting provisions set out as notes under section 2257 of this title and section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Child Protection Restoration and Penalties Enhancement Act of 1990’.”

SHORT TITLE OF 1988 AMENDMENT

Section 7501 of title VII of Pub. L. 100-690 provided that: “This subtitle [subtitle N (§§7501-7526) of title VII of Pub. L. 100-690, enacting sections 1460, 1466 to 1469, 2251A, and 2257 of this title, amending this section, sections 1465, 1961, 2252 to 2254, 2256, and 2516 of this title, section 1305 of Title 19, Customs Duties, and section 223 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and enacting provisions set out as a note under section 2257 of this title] may be cited as the ‘Child Protection and Obscenity Enforcement Act of 1988’.”

SHORT TITLE OF 1986 AMENDMENTS

Section 1 of Pub. L. 99-628 provided that: “This Act [enacting sections 2421 to 2423 of this title, amending

this section and sections 2255 and 2424 of this title, and repealing former sections 2421 to 2423 of this title] may be cited as the ‘Child Sexual Abuse and Pornography Act of 1986’.”

Section 101(b) [title VII, §701] of Pub. L. 99-500 and Pub. L. 99-591 provided that: “This title [enacting section 2255 of this title, amending this section and section 2252 of this title, redesignating former section 2255 of this title as 2256, and enacting provisions set out as notes under this section] may be cited as the ‘Child Abuse Victims’ Rights Act of 1986’.”

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-292 provided: “That this Act [enacting sections 2253 and 2254 of this title, amending this section and sections 2252, 2255, and 2516 of this title, and enacting provisions set out as notes under this section and section 522 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Child Protection Act of 1984’.”

SHORT TITLE

Section 1 of Pub. L. 95-225 provided: “That this Act [enacting this chapter and amending section 2423 of this title] may be cited as the ‘Protection of Children Against Sexual Exploitation Act of 1977’.”

SEVERABILITY

Section 101(a) [title I, §121(8)] of Pub. L. 104-208 provided that: “If any provision of this Act [probably means section 121 of Pub. L. 104-208, div. A, title I, §101(a), see Short Title of 1996 Amendment note above], including any provision or section of the definition of the term child pornography, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, including any other provision or section of the definition of the term child pornography, the amendments made by this Act, and the application of such to any other person or circumstance shall not be affected thereby.”

Section 4 of Pub. L. 95-225 provided that: “If any provision of this Act [see Short Title note set out above] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.”

CONGRESSIONAL FINDINGS

Section 101(a) [title I, §121(1)] of Pub. L. 104-208 provided that: “Congress finds that—

“(1) the use of children in the production of sexually explicit material, including photographs, films, videos, computer images, and other visual depictions, is a form of sexual abuse which can result in physical or psychological harm, or both, to the children involved;

“(2) where children are used in its production, child pornography permanently records the victim’s abuse, and its continued existence causes the child victims of sexual abuse continuing harm by haunting those children in future years;

“(3) child pornography is often used as part of a method of seducing other children into sexual activity; a child who is reluctant to engage in sexual activity with an adult, or to pose for sexually explicit photographs, can sometimes be convinced by viewing depictions of other children ‘having fun’ participating in such activity;

“(4) child pornography is often used by pedophiles and child sexual abusers to stimulate and whet their own sexual appetites, and as a model for sexual acting out with children; such use of child pornography can desensitize the viewer to the pathology of sexual abuse or exploitation of children, so that it can become acceptable to and even preferred by the viewer;

“(5) new photographic and computer imaging [sic] technologies make it possible to produce by elec-

tronic, mechanical, or other means, visual depictions of what appear to be children engaging in sexually explicit conduct that are virtually indistinguishable to the unsuspecting viewer from unretouched photographic images of actual children engaging in sexually explicit conduct;

“(6) computers and computer imaging technology can be used to—

“(A) alter sexually explicit photographs, films, and videos in such a way as to make it virtually impossible for unsuspecting viewers to identify individuals, or to determine if the offending material was produced using children;

“(B) produce visual depictions of child sexual activity designed to satisfy the preferences of individual child molesters, pedophiles, and pornography collectors; and

“(C) alter innocent pictures of children to create visual depictions of those children engaging in sexual conduct;

“(7) the creation or distribution of child pornography which includes an image of a recognizable minor invades the child’s privacy and reputational interests, since images that are created showing a child’s face or other identifiable feature on a body engaging in sexually explicit conduct can haunt the minor for years to come;

“(8) the effect of visual depictions of child sexual activity on a child molester or pedophile using that material to stimulate or whet his own sexual appetites, or on a child where the material is being used as a means of seducing or breaking down the child’s inhibitions to sexual abuse or exploitation, is the same whether the child pornography consists of photographic depictions of actual children or visual depictions produced wholly or in part by electronic, mechanical, or other means, including by computer, which are virtually indistinguishable to the unsuspecting viewer from photographic images of actual children;

“(9) the danger to children who are seduced and molested with the aid of child sex pictures is just as great when the child pornographer or child molester uses visual depictions of child sexual activity produced wholly or in part by electronic, mechanical, or other means, including by computer, as when the material consists of unretouched photographic images of actual children engaging in sexually explicit conduct;

“(10)(A) the existence of and traffic in child pornographic images creates the potential for many types of harm in the community and presents a clear and present danger to all children; and

“(B) it inflames the desires of child molesters, pedophiles, and child pornographers who prey on children, thereby increasing the creation and distribution of child pornography and the sexual abuse and exploitation of actual children who are victimized as a result of the existence and use of these materials;

“(11)(A) the sexualization and eroticization of minors through any form of child pornographic images has a deleterious effect on all children by encouraging a societal perception of children as sexual objects and leading to further sexual abuse and exploitation of them; and

“(B) this sexualization of minors creates an unwholesome environment which affects the psychological, mental and emotional development of children and undermines the efforts of parents and families to encourage the sound mental, moral and emotional development of children;

“(12) prohibiting the possession and viewing of child pornography will encourage the possessors of such material to rid themselves of or destroy the material, thereby helping to protect the victims of child pornography and to eliminate the market for the sexual exploitative use of children; and

“(13) the elimination of child pornography and the protection of children from sexual exploitation provide a compelling governmental interest for prohibiting the production, distribution, possession, sale, or

viewing of visual depictions of children engaging in sexually explicit conduct, including both photographic images of actual children engaging in such conduct and depictions produced by computer or other means which are virtually indistinguishable to the unsuspecting viewer from photographic images of actual children engaging in such conduct.”

Section 101(b) [title VII, §702] of Pub. L. 99-500 and Pub. L. 99-591 provided that: “The Congress finds that—

“(1) child exploitation has become a multi-million dollar industry, infiltrated and operated by elements of organized crime, and by a nationwide network of individuals openly advertising their desire to exploit children;

“(2) Congress has recognized the physiological, psychological, and emotional harm caused by the production, distribution, and display of child pornography by strengthening laws prescribing such activity;

“(3) the Federal Government lacks sufficient enforcement tools to combat concerted efforts to exploit children prescribed by Federal law, and exploitation victims lack effective remedies under Federal law; and

“(4) current rules of evidence, criminal procedure, and civil procedure and other courtroom and investigative procedures inhibit the participation of child victims as witnesses and damage their credibility when they do testify, impairing the prosecution of child exploitation offenses.”

Section 2 of Pub. L. 98-292 provided that: “The Congress finds that—

“(1) child pornography has developed into a highly organized, multi-million-dollar industry which operates on a nationwide scale;

“(2) thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials; and

“(3) the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the individual child and to society.”

REPORT BY ATTORNEY GENERAL

Section 101(b) [title VII, §705] of Pub. L. 99-500 and Pub. L. 99-591 required Attorney General, within one year after Oct. 18, 1986, to submit a report to Congress detailing possible changes in Federal Rules of Evidence, Federal Rules of Criminal Procedure, Federal Rules of Civil Procedure, and other Federal courtroom, prosecutorial, and investigative procedures which would facilitate the participation of child witnesses in cases involving child abuse and sexual exploitation.

ANNUAL REPORT TO CONGRESS

Attorney General to report annually to Congress on prosecutions, convictions, and forfeitures under this chapter, see section 9 of Pub. L. 98-292, set out as a note under section 522 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2253, 2254, 2255, 2516, 3486, 3559 of this title; title 8 section 1101; title 42 sections 2000aa, 13032, 14135a.

§ 2251A. Selling or buying of children

(a) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor either—

(1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) with intent to promote either—

(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(b) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either—

(1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) with intent to promote either—

(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(c) The circumstances referred to in subsections (a) and (b) are that—

(1) in the course of the conduct described in such subsections the minor or the actor traveled in or was transported in interstate or foreign commerce;

(2) any offer described in such subsections was communicated or transported in interstate or foreign commerce by any means including by computer or mail; or

(3) the conduct described in such subsections took place in any territory or possession of the United States.

(Added Pub. L. 100-690, title VII, §7512(a), Nov. 18, 1988, 102 Stat. 4486.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2253, 2254, 2255, 3486 of this title; title 8 section 1101; title 42 sections 2000aa, 13032, 14135a.

§ 2252. Certain activities relating to material involving the sexual exploitation of minors

(a) Any person who—

(1) knowingly transports or ships in interstate or foreign commerce by any means including by computer or mails, any visual depiction, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(2) knowingly receives, or distributes, any visual depiction that has been mailed, or has

been shipped or transported in interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(3) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly sells or possesses with intent to sell any visual depiction; or

(B) knowingly sells or possesses with intent to sell any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means, including by computer, if—

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct; or

(4) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly possesses 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

(B) knowingly possesses 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if—

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct;

shall be punished as provided in subsection (b) of this section.

(b)(1) Whoever violates, or attempts or conspires to violate, paragraphs¹ (1), (2), or (3) of subsection (a) shall be fined under this title or imprisoned not more than 15 years, or both, but if such person has a prior conviction under this chapter, chapter 109A, or chapter 117, or under the laws of any State relating to aggravated

¹ So in original. Probably should be "paragraph".

sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 5 years nor more than 30 years.

(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 5 years, or both, but if such person has a prior conviction under this chapter, chapter 109A, or chapter 117, or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 2 years nor more than 10 years.

(c) **AFFIRMATIVE DEFENSE.**—It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant—

(1) possessed less than three matters containing any visual depiction proscribed by that paragraph; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof—

(A) took reasonable steps to destroy each such visual depiction; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

(Added Pub. L. 95-225, §2(a), Feb. 6, 1978, 92 Stat. 7; amended Pub. L. 98-292, §4, May 21, 1984, 98 Stat. 204; Pub. L. 99-500, §101(b) [title VII, §704(b)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-75, and Pub. L. 99-591, §101(b) [title VII, §704(b)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-75; Pub. L. 100-690, title VII, §7511(b), Nov. 18, 1988, 102 Stat. 4485; Pub. L. 101-647, title III, §323(a), (b), Nov. 29, 1990, 104 Stat. 4818, 4819; Pub. L. 103-322, title XVI, §160001(d), (e), title XXXIII, §330010(8), Sept. 13, 1994, 108 Stat. 2037, 2143; Pub. L. 104-208, div. A, title I, §101(a) [title I, §121(5)], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-30; Pub. L. 105-314, title II, §§202(a), 203(a), Oct. 30, 1998, 112 Stat. 2977, 2978.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

1998—Subsec. (a)(4)(A), (B). Pub. L. 105-314, §203(a)(1), substituted “1 or more” for “3 or more”.

Subsec. (b). Pub. L. 105-314, §202(a), substituted “, chapter 109A, or chapter 117” for “or chapter 109A” in pars. (1) and (2) and substituted “aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography” for “the possession of child pornography” in par. (2).

Subsec. (c). Pub. L. 105-314, §203(a)(2), added subsec. (c).

1996—Subsec. (b). Pub. L. 104-208 added subsec. (b) and struck out former subsec. (b) which read as follows:

“(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall

be fined under this title or imprisoned not more than ten years, or both, but, if such person has a prior conviction under this chapter or chapter 109A, such person shall be fined under this title and imprisoned for not less than five years nor more than fifteen years.

“(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned for not more than five years, or both.”

1994—Subsec. (a)(3)(B). Pub. L. 103-322, §330010(8), substituted “materials” for “materails” in introductory provisions.

Subsec. (b)(1). Pub. L. 103-322, §160001(d), (e), inserted “, or attempts or conspires to violate,” after “violates” and “substituted “conviction under this chapter or chapter 109A” for “conviction under this section”.

Subsec. (b)(2). Pub. L. 103-322, §160001(e), inserted “, or attempts or conspires to violate,” after “violates”.

1990—Subsec. (a). Pub. L. 101-647, §323(a), (b), struck out “or” at end of par. (1), substituted “that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer,” for “that has been transported or shipped in interstate or foreign commerce by any means including by computer or mailed” in par. (2), struck out at end “shall be punished as provided in subsection (b) of this section.”, and added pars. (3) and (4) and concluding provisions.

Subsec. (b). Pub. L. 101-647, §323(a)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: “Any individual who violates this section shall be fined not more than \$100,000, or imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this section, such individual shall be fined not more than \$200,000, or imprisoned not less than five years nor more than 15 years, or both. Any organization which violates this section shall be fined not more than \$250,000.”

1988—Subsec. (a)(1), (2). Pub. L. 100-690 inserted “by any means including by computer” after “commerce” in introductory provisions.

1986—Subsec. (b). Pub. L. 99-500 and Pub. L. 99-591 substituted “five years” for “two years”.

1984—Subsec. (a)(1). Pub. L. 98-292, §4(1), (3), (4), substituted “any visual depiction” for “for the purpose of sale or distribution for sale, any obscene visual or print medium” in provisions preceding subpar. (A).

Subsec. (a)(1)(A). Pub. L. 98-292, §4(4), substituted “visual depiction” for “visual or print medium”.

Subsec. (a)(1)(B). Pub. L. 98-292, §4(4), (5), substituted “visual depiction is of” for “visual or print medium depicts”.

Subsec. (a)(2). Pub. L. 98-292, §4(2)–(4), (6), (7), substituted “, or distributes, any visual depiction” for “for the purpose of sale or distribution for sale, or knowingly sells or distributes for sale, any obscene visual or print medium” and inserted “or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails” in provisions preceding subpar. (A).

Subsec. (a)(2)(A). Pub. L. 98-292, §4(4), substituted “visual depiction” for “visual or print medium”.

Subsec. (a)(2)(B). Pub. L. 98-292, §4(4), (5), substituted “visual depiction is of” for “visual or print medium depicts”.

Subsec. (b). Pub. L. 98-292, §4(8)–(11), substituted “individual” for “person” in three places, “\$100,000” for “\$10,000”, and “\$200,000” for “\$15,000”, and inserted “Any organization which violates this section shall be fined not more than \$250,000.”

CONFIRMATION OF INTENT OF CONGRESS IN ENACTING SECTIONS 2252 AND 2256 OF THIS TITLE

Section 160003(a) of Pub. L. 103-322 provided that:

“(a) **DECLARATION.**—The Congress declares that in enacting sections 2252 and 2256 of title 18, United States Code, it was and is the intent of Congress that—

“(1) the scope of ‘exhibition of the genitals or pubic area’ in section 2256(2)(E), in the definition of ‘sexu-

ally explicit conduct', is not limited to nude exhibitions or exhibitions in which the outlines of those areas were discernible through clothing; and

"(2) the requirements in section 2252(a)(1)(A), (2)(A), (3)(B)(i), and (4)(B)(i) that the production of a visual depiction involve the use of a minor engaging in 'sexually explicit conduct' of the kind described in section 2256(2)(E) are satisfied if a person photographs a minor in such a way as to exhibit the child in a lascivious manner."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2253, 2254, 2255, 2516, 3486 of this title; title 8 section 1101; title 42 sections 2000aa, 13032, 14135a.

§ 2252A. Certain activities relating to material constituting or containing child pornography

(a) Any person who—

(1) knowingly mails, or transports or ships in interstate or foreign commerce by any means, including by computer, any child pornography;

(2) knowingly receives or distributes—

(A) any child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer; or

(B) any material that contains child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer;

(3) knowingly reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer;

(4) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly sells or possesses with the intent to sell any child pornography; or

(B) knowingly sells or possesses with the intent to sell any child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer; or

(5) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly possesses any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or

(B) knowingly possesses any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, in-

cluding by computer, or that was produced using materials that have been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer,

shall be punished as provided in subsection (b).

(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), (3), or (4) of subsection (a) shall be fined under this title or imprisoned not more than 15 years, or both, but, if such person has a prior conviction under this chapter, chapter 109A, or chapter 117, or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 5 years nor more than 30 years.

(2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 5 years, or both, but, if such person has a prior conviction under this chapter, chapter 109A, or chapter 117, or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 2 years nor more than 10 years.

(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3), or (4) of subsection (a) that—

(1) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct;

(2) each such person was an adult at the time the material was produced; and

(3) the defendant did not advertise, promote, present, describe, or distribute the material in such a manner as to convey the impression that it is or contains a visual depiction of a minor engaging in sexually explicit conduct.

(d) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating subsection (a)(5) that the defendant—

(1) possessed less than three images of child pornography; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof—

(A) took reasonable steps to destroy each such image; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

(Added Pub. L. 104-208, div. A, title I, §101(a) [title I, §121(3)(a)], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-28; amended Pub. L. 105-314, title II, §§202(b), 203(b), Oct. 30, 1998, 112 Stat. 2978; Pub. L. 107-273, div. B, title IV, §4003(a)(5), Nov. 2, 2002, 116 Stat. 1811.)

AMENDMENTS

2002—Subsecs. (b)(1), (c). Pub. L. 107-273 substituted "paragraph" for "paragraphs".

1998—Subsec. (a)(5)(A), (B). Pub. L. 105-314, § 203(b)(1), substituted “an image” for “3 or more images”.

Subsec. (b). Pub. L. 105-314, § 202(b), substituted “, chapter 109A, or chapter 117” for “or chapter 109A” in pars. (1) and (2) and substituted “aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography” for “the possession of child pornography” in par. (2).

Subsec. (d). Pub. L. 105-314, § 203(b)(2), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2253, 2254, 2255, 3486 of this title; title 42 sections 2000aa, 13032.

§ 2253. Criminal forfeiture

(a) **PROPERTY SUBJECT TO CRIMINAL FORFEITURE.**—A person who is convicted of an offense under this chapter involving a visual depiction described in section 2251, 2251A, 2252, 2252A, or 2260 of this chapter, or who is convicted of an offense under section 2421, 2422, or 2423 of chapter 117, shall forfeit to the United States such person's interest in—

(1) any visual depiction described in section 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of this chapter;

(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

(b) **THIRD PARTY TRANSFERS.**—All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(c) **PROTECTIVE ORDERS.**—(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

except that an order entered pursuant to subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(d) **WARRANT OF SEIZURE.**—The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (c) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(e) **ORDER OF FORFEITURE.**—The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(f) **EXECUTION.**—Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants,

or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

(g) **DISPOSITION OF PROPERTY.**—Following the seizure of property ordered forfeited under this section, the Attorney General shall destroy or retain for official use any article described in paragraph (1) of subsection (a), and shall retain for official use or direct the disposition of any property described in paragraph (2) or (3) of subsection (a) by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(h) **AUTHORITY OF ATTORNEY GENERAL.**—With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, under section 616 of the Tariff Act of 1930, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(i) **APPLICABILITY OF CIVIL FORFEITURE PROVISIONS.**—Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 2254(d) of this title (18 U.S.C. 2254(d)) shall apply to a criminal forfeiture under this section.

(j) **BAR ON INTERVENTION.**—Except as provided in subsection (m) of this section, no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(k) **JURISDICTION TO ENTER ORDERS.**—The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(l) **DEPOSITIONS.**—In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under rule 15 of the Federal Rules of Criminal Procedure.

(m) **THIRD PARTY INTERESTS.**—(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In

addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(n) CONSTRUCTION.—This section shall be liberally construed to effectuate its remedial purposes.

(o) SUBSTITUTE ASSETS.—If any of the property described in subsection (a), as a result of any act or omission of the defendant—

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

(Added Pub. L. 98-292, § 6, May 21, 1984, 98 Stat. 205; amended Pub. L. 100-690, title VII, § 7522(c), Nov. 18, 1988, 102 Stat. 4494; Pub. L. 101-647, title XXXV, § 3564, Nov. 29, 1990, 104 Stat. 4928; Pub. L. 103-322, title XXXIII, § 330011(m)(1), Sept. 13, 1994, 108 Stat. 2145; Pub. L. 105-314, title VI, § 602, Oct. 30, 1998, 112 Stat. 2982.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 616 of the Tariff Act of 1930, referred to in subsec. (h)(4), is classified to section 1616a of Title 19, Customs Duties.

The Federal Rules of Criminal Procedure, referred to in subsec. (l), are set out in the Appendix to this title.

PRIOR PROVISIONS

A prior section 2253 was redesignated section 2256 of this title.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-314 substituted “2252, 2252A, or 2260 of this chapter, or who is convicted of an offense under section 2421, 2422, or 2423 of chapter 117,” for “or 2252 of this chapter”.

1994—Subsec. (a). Pub. L. 103-322, § 330011(m)(1), amended directory language of Pub. L. 101-647, § 3564(1). See 1990 Amendment note below.

1990—Subsec. (a). Pub. L. 101-647, § 3564(1), as amended by Pub. L. 103-322, § 330011(m)(1), substituted “section 2251” for “sections 2251” in introductory provisions and in par. (1).

Subsec. (h)(4). Pub. L. 101-647, § 3564(2), substituted “under section 616 of the Tariff Act of 1930” for “in accordance with the provisions of section 1616, title 19, United States Code”.

1988—Pub. L. 100-690 amended section generally, substituting subsecs. (a) to (o) for former subsecs. (a) to (d).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(m) of Pub. L. 103-322 provided that the amendment made by that section is effective as of Nov. 29, 1990.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2516 of this title.

§ 2254. Civil forfeiture

(a) PROPERTY SUBJECT TO CIVIL FORFEITURE.—The following property shall be subject to forfeiture by the United States:

(1) Any visual depiction described in section 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, or received in violation of this chapter.

(2) Any property, real or personal, used or intended to be used to commit or to promote the commission of an offense under this chapter involving a visual depiction described in section 2251, 2251A, 2252, 2252A, or 2260 of this chapter, or used or intended to be used to commit or to promote the commission of an offense under section 2421, 2422, or 2423 of chapter 117.¹

(3) Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from a violation of this chapter involving a visual depiction described in section 2251, 2251A, 2252, 2252A, or 2260 of this chapter, or obtained from a violation of section 2421, 2422, or 2423 of chapter 117.

(b) SEIZURE PURSUANT TO SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS.—Any property subject to forfeiture to the United States under this section may be seized by the Attorney General, the Secretary of the Treasury, or the United States Postal Service upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when the seizure is pursuant to a search under a search warrant or incident to an arrest. The Government may request the issuance of a warrant authorizing the seizure of property sub-

¹ So in original.

ject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

(c) CUSTODY OF FEDERAL OFFICIAL.—Property taken or detained under this section shall not be replevable, but shall be deemed to be in the custody of the Attorney General, Secretary of the Treasury, or the United States Postal Service subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General, Secretary of the Treasury, or the United States Postal Service may—

- (1) place the property under seal;
- (2) remove the property to a place designated by the official or agency; or
- (3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) OTHER LAWS AND PROCEEDINGS APPLICABLE.—All provisions of the customs laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, the Secretary of the Treasury, or the Postal Service, except to the extent that such duties arise from seizures and forfeitures affected by any customs officer.

(e) INAPPLICABILITY OF CERTAIN SECTIONS.—Sections 1606, 1613, 1614, 1617, and 1618 of title 19, United States Code, shall not apply with respect to any visual depiction or any matter containing a visual depiction subject to forfeiture under subsection (a)(1) of this section.

(f) DISPOSITION OF FORFEITED PROPERTY.—Whenever property is forfeited under this section the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and, with respect to property described in paragraph (2) or (3) of subsection (a), may—

- (1) retain the property for official use or transfer the custody or ownership of any forfeited property to a Federal, State, or local agency under section 616 of the Tariff Act of 1930;
- (2) sell, by public sale or any other commercially feasible means, any forfeited property which is not required to be destroyed by law and which is not harmful to the public; or
- (3) require that the General Services Administration take custody of the property and dispose of it in accordance with law.

The Attorney General, Secretary of the Treasury, or the United States Postal Service shall

ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by an official or agency pursuant to paragraph (1) shall not be subject to judicial review. With respect to a forfeiture conducted by the Attorney General, the Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28 the proceeds from any sale under paragraph (2) and any moneys forfeited under this section. With respect to a forfeiture conducted by the Postal Service, the proceeds from any sale under paragraph (2) and any moneys forfeited under this section shall be deposited in the Postal Service Fund as required by section 2003(b)(7) of title 39.

(g) TITLE TO PROPERTY.—All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(h) STAY OF PROCEEDINGS.—The filing of an indictment or information alleging a violation of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

(i) VENUE.—In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(Added Pub. L. 98–292, §6, May 21, 1984, 98 Stat. 205; amended Pub. L. 99–500, §101(m) [title II, §201(a), (c)], Oct. 18, 1986, 100 Stat. 1783–308, 1783–314, and Pub. L. 99–591, §101(m) [title II, §201(a), (c)], Oct. 30, 1986, 100 Stat. 3341–308, 3341–314; Pub. L. 100–690, title VII, §7522(c), Nov. 18, 1988, 102 Stat. 4498; Pub. L. 101–647, title XX, §2003, title XXXV, §3565, Nov. 29, 1990, 104 Stat. 4855, 4928; Pub. L. 103–322, title XXXIII, §330011(m)(2), Sept. 13, 1994, 108 Stat. 2145; Pub. L. 105–314, title VI, §603, Oct. 30, 1998, 112 Stat. 2982; Pub. L. 106–185, §2(c)(4), Apr. 25, 2000, 114 Stat. 211; Pub. L. 107–273, div. B, title IV, §4003(a)(6), Nov. 2, 2002, 116 Stat. 1811.)

REFERENCES IN TEXT

The Supplemental Rules for Certain Admiralty and Maritime Claims, referred to in subsec. (b), are set out as part of the Federal Rules of Civil Procedure in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Criminal Procedure, referred to in subsec. (b), are set out in the Appendix to this title.

The customs laws, referred to in subsec. (d), are classified generally to Title 19, Customs Duties.

Section 616 of the Tariff Act of 1930, referred to in subsec. (f)(1), is classified to section 1616a of Title 19.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2002—Subsec. (a)(3). Pub. L. 107–273 struck out comma before period at end.

2000—Subsec. (a)(2), (3). Pub. L. 106-185 struck out before period at end “, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner”.

1998—Subsec. (a)(2). Pub. L. 105-314, §603(1), substituted “2252, 2252A, or 2260 of this chapter, or used or intended to be used to commit or to promote the commission of an offense under section 2421, 2422, or 2423 of chapter 117,” for “or 2252 of this chapter”.

Subsec. (a)(3). Pub. L. 105-314, §603(2), substituted “2252, 2252A, or 2260 of this chapter, or obtained from a violation of section 2421, 2422, or 2423 of chapter 117,” for “or 2252 of this chapter”.

1994—Subsec. (f). Pub. L. 103-322, §330011(m)(2), amended directory language of Pub. L. 101-647, §3565(3)(A). See 1990 Amendment note below.

1990—Subsec. (a)(1) to (3). Pub. L. 101-647, §3565(1), substituted “section 2251” for “sections 2251”.

Subsec. (e). Pub. L. 101-647, §3565(2), inserted heading. Subsec. (f). Pub. L. 101-647, §3565(3)(A), as amended by Pub. L. 103-322, §330011(m)(2), substituted “section” for “subchapter” after “forfeited under this” in two places in concluding provisions.

Subsec. (f)(1). Pub. L. 101-647, §3565(3)(B), substituted “under section 616 of the Tariff Act of 1930” for “pursuant to section 1616 of title 19”.

Subsec. (f)(2). Pub. L. 101-647, §2003, inserted “, by public sale or any other commercially feasible means,” after “sell”.

1988—Pub. L. 100-690 amended section generally, substituting subsecs. (a) to (i) for former subsecs. (a) to (d).

1986—Pub. L. 99-500 and Pub. L. 99-591 amended section identically, inserting “, and any property, real or personal, tangible or intangible, which was used or intended to be used, in any manner or part, to facilitate a violation of this chapter” in subsec. (a)(1), substituting “Attorney General or the Postal Service” for “Attorney General” in subsec. (b), and adding subsecs. (c) and (d).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106-185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(m) of Pub. L. 103-322 provided that the amendment made by that section is effective as of Nov. 29, 1990.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2253 of this title.

§ 2255. Civil remedy for personal injuries

(a) Any minor who is a victim of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation may sue in any appropriate United States District Court and shall recover the actual damages such minor sustains and the cost of the suit, including a reasonable attorney’s fee. Any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than \$50,000 in value.

(b) Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability.

(Added Pub. L. 99-500, §101(b) [title VII, §703(a)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-74, and Pub. L. 99-591, §101(b) [title VII, §703(a)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-74; amended Pub. L. 105-314, title VI, §605, Oct. 30, 1998, 112 Stat. 2984.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

PRIOR PROVISIONS

A prior section 2255 was renumbered section 2256 of this title.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-314 substituted “2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423” for “2251 or 2252”.

§ 2256. Definitions for chapter

For the purposes of this chapter, the term—

(1) “minor” means any person under the age of eighteen years;

(2) “sexually explicit conduct” means actual or simulated—

(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) bestiality;

(C) masturbation;

(D) sadistic or masochistic abuse; or

(E) lascivious exhibition of the genitals or pubic area of any person;

(3) “producing” means producing, directing, manufacturing, issuing, publishing, or advertising;

(4) “organization” means a person other than an individual;

(5) “visual depiction” includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image;

(6) “computer” has the meaning given that term in section 1030 of this title;

(7) “custody or control” includes temporary supervision over or responsibility for a minor whether legally or illegally obtained;

(8) “child pornography” means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where—

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(B) such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or

(D) such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct; and

(9) “identifiable minor”—

(A) means a person—

(i)(I) who was a minor at the time the visual depiction was created, adapted, or modified; or

(II) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(ii) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(B) shall not be construed to require proof of the actual identity of the identifiable minor.

(Added Pub. L. 95-225, §2(a), Feb. 6, 1978, 92 Stat. 8, §2253; renumbered §2255 and amended Pub. L. 98-292, §5, May 21, 1984, 98 Stat. 205; renumbered §2256, Pub. L. 99-500, §101(b) [title VII, §703(a)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-74, and Pub. L. 99-591, §101(b) [title VII, §703(a)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-74; Pub. L. 99-628, §4, Nov. 7, 1986, 100 Stat. 3510; Pub. L. 100-690, title VII, §§7511(c), 7512(b), Nov. 18, 1988, 102 Stat. 4485, 4486; Pub. L. 104-208, div. A, title I, §101(a) [title I, §121[2]], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-27.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

1996—Par. (5). Pub. L. 104-208, §101(a) [title I, §121[2](1)], inserted “, and data stored on computer disk or by electronic means which is capable of conversion into a visual image” before semicolon at end.

Pars. (8), (9). Pub. L. 104-208, §101(a) [title I, §1212-(4)], added pars. (8) and (9).

1988—Par. (6). Pub. L. 100-690, §7511(c), added par. (6).

Par. (7). Pub. L. 100-690, §7512(b), added par. (7).

1986—Pub. L. 99-500 and Pub. L. 99-591 renumbered section 2255 of this title as this section.

Par. (5). Pub. L. 99-628, which directed that par. (5) be added to section 2255 of this title, was executed by adding par. (5) to section 2256 of this title to reflect the probable intent of Congress and the renumbering of section 2255 as 2256 by Pub. L. 99-500 and Pub. L. 99-591.

1984—Pub. L. 98-292, §5(b), renumbered section 2253 of this title as this section.

Par. (1). Pub. L. 98-292, §5(a)(1), substituted “eighteen” for “sixteen”.

Par. (2)(D). Pub. L. 98-292, §5(a)(2), (3), substituted “sadistic or masochistic” for “sado-masochistic” and struck out “(for the purpose of sexual stimulation)” after “abuse”.

Par. (2)(E). Pub. L. 98-292, §5(a)(4), substituted “lascivious” for “lewd”.

Par. (3). Pub. L. 98-292, §5(a)(5), struck out “, for pecuniary profit” after “advertising”.

Par. (4). Pub. L. 98-292, §5(a)(6), substituted “‘organization’ means a person other than an individual” for “‘visual or print medium’ means any film, photograph, negative, slide, book, magazine, or other visual or print medium”.

CONFIRMATION OF INTENT OF CONGRESS IN ENACTING SECTIONS 2252 AND 2256 OF THIS TITLE

For provisions declaring and confirming intent of Congress in enacting this section, see section 160003(a) of Pub. L. 103-322, set out as a note under section 2252 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2257, 2427 of this title; title 20 sections 6777, 9134; title 42 section 13032; title 47 section 254.

§ 2257. Record keeping requirements

(a) Whoever produces any book, magazine, periodical, film, videotape, or other matter which—

(1) contains one or more visual depictions made after November 1, 1990 of actual sexually explicit conduct; and

(2) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

shall create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction.

(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of actual sexually explicit conduct—

(1) ascertain, by examination of an identification document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations;

(2) ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and

(3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) of this subsection and such other identifying information as may be prescribed by regulation.

(c) Any person to whom subsection (a) applies shall maintain the records required by this section at his business premises, or at such other place as the Attorney General may by regulation prescribe and shall make such records available to the Attorney General for inspection at all reasonable times.

(d)(1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in this section, directly or indirectly, be used as evidence against any person with respect to any violation of law.

(2) Paragraph (1) of this subsection shall not preclude the use of such information or evidence in a prosecution or other action for a violation of this section or for a violation of any applicable provision of law with respect to the furnishing of false information.

(e)(1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in paragraph (1) of subsection (a) of this section, in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted in that copy of the matter may be located.

(2) If the person to whom subsection (a) of this section applies is an organization the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

(f) It shall be unlawful—

(1) for any person to whom subsection (a) applies to fail to create or maintain the records as required by subsections (a) and (c) or by any regulation promulgated under this section;

(2) for any person to whom subsection (a) applies knowingly to make any false entry in or knowingly to fail to make an appropriate entry in, any record required by subsection (b) of this section or any regulation promulgated under this section;

(3) for any person to whom subsection (a) applies knowingly to fail to comply with the provisions of subsection (e) or any regulation promulgated pursuant to that subsection; and

(4) for any person knowingly to sell or otherwise transfer, or offer for sale or transfer, any book, magazine, periodical, film, video, or other matter, produce in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce or which is intended for shipment in interstate or foreign commerce, which—

(A) contains one or more visual depictions made after the effective date of this subsection of actual sexually explicit conduct; and

(B) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

which does not have affixed thereto, in a manner prescribed as set forth in subsection (e)(1), a statement describing where the records required by this section may be located, but such person shall have no duty to determine the accuracy of the contents of the statement or the records required to be kept.

(g) The Attorney General shall issue appropriate regulations to carry out this section.

(h) As used in this section—

(1) the term “actual sexually explicit conduct” means actual but not simulated conduct as defined in subparagraphs (A) through (D) of paragraph (2) of section 2256 of this title;

(2) “identification document” has the meaning given that term in section 1028(d) of this title;

(3) the term “produces” means to produce, manufacture, or publish any book, magazine, periodical, film, video tape or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity which does not involve hiring, contracting for managing, or otherwise arranging for the participation of the performers depicted; and

(4) the term “performer” includes any person portrayed in a visual depiction engaging in, or assisting another person to engage in, actual sexually explicit conduct.

(i) Whoever violates this section shall be imprisoned for not more than 2 years, and fined in accordance with the provisions of this title, or both. Whoever violates this section after having been convicted of a violation punishable under this section shall be imprisoned for any period

of years not more than 5 years but not less than 2 years, and fined in accordance with the provisions of this title, or both.

(Added Pub. L. 100-690, title VII, §7513(a), Nov. 18, 1988, 102 Stat. 4487; amended Pub. L. 101-647, title III, §§301(b), 311, Nov. 29, 1990, 104 Stat. 4816; Pub. L. 103-322, title XXXIII, §330004(14), Sept. 13, 1994, 108 Stat. 2142.)

REFERENCES IN TEXT

For effective date of this subsection, referred to in subsec. (f)(4)(A), see section 312 of Pub. L. 101-647, set out as an Effective Date of 1990 Amendment note below.

AMENDMENTS

1994—Subsecs. (f), (g). Pub. L. 103-322 struck out subsecs. (f) and (g) as enacted by Pub. L. 100-690. Subsec. (f) authorized Attorney General to issue regulations to carry out this section and subsec. (g) defined “actual sexually explicit conduct”, “identification document”, “produces”, and “performer”.

1990—Subsec. (a)(1). Pub. L. 101-647, §301(b), substituted “November 1, 1990” for “February 6, 1978”.

Subsec. (d). Pub. L. 101-647, §311, substituted pars. (1) and (2) for former pars. (1) and (2) which were substantially the same and struck out par. (3) which read as follows: “In a prosecution of any person to whom subsection (a) applies for an offense in violation of subsection 2251(a) of this title which has as an element the production of a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct and in which that element is sought to be established by showing that a performer within the meaning of this section is a minor—

“(A) proof that the person failed to comply with the provisions of subsection (a) or (b) of this section concerning the creation and maintenance of records, or a regulation issued pursuant thereto, shall raise a rebuttable presumption that such performer was a minor; and

“(B) proof that the person failed to comply with the provisions of subsection (e) of this section concerning the statement required by that subsection shall raise the rebuttable presumption that every performer in the matter was a minor.”

Subsec. (e). Pub. L. 101-647, §311, substituted pars. (1) and (2) for former pars. (1) and (2) which were substantially the same and struck out par. (3) which read as follows: “In any prosecution of a person for an offense in violation of section 2252 of this title which has as an element the transporting, mailing, or distribution of a visual depiction involving the use of a minor engaging in sexually explicit conduct, and in which that element is sought to be established by a showing that a performer within the meaning of this section is a minor, proof that the matter in which the visual depiction is contained did not contain the statement required by this section shall raise a rebuttable presumption that such performer was a minor.”

Subsec. (f). Pub. L. 101-647, §311, added subsec. (f) relating to unlawful acts and omissions.

Subsec. (g). Pub. L. 101-647, §311, added subsec. (g) relating to issuance of regulations.

Subsecs. (h), (i). Pub. L. 101-647, §311, added subsecs. (h) and (i).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 312 of title III of Pub. L. 101-647 provided that: “Subsections (d), (f), (g), (h), and (i) of section 2257 of title 18, United States Code, as added by this title shall take effect 90 days after the date of the enactment of this Act [Nov. 29, 1990] except—

“(1) the Attorney General shall prepare the initial set of regulations required or authorized by subsections (d), (f), (g), (h), and (i) of section 2257 within 60 days of the date of the enactment of this Act; and

“(2) subsection (e) of section 2257 and of any regulation issued pursuant thereto shall take effect 90 days after the date of the enactment of this Act.”

EFFECTIVE DATE

Section 7513(c) of Pub. L. 100-690 provided that: "Section 2257 of title 18, United States Code, as added by this section shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1988] except—

"(1) the Attorney General shall prepare the initial set of regulations required or authorized by section 2257 within 90 days of the date of the enactment of this Act; and

"(2) subsection (e) of section 2257 of such title and of any regulation issued pursuant thereto shall take effect 270 days after the date of the enactment of this Act."

§ 2258. Failure to report child abuse

A person who, while engaged in a professional capacity or activity described in subsection (b) of section 226 of the Victims of Child Abuse Act of 1990 on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, as defined in subsection (c) of that section, and fails to make a timely report as required by subsection (a) of that section, shall be guilty of a Class B misdemeanor.

(Added Pub. L. 101-647, title II, §226(g)(1), Nov. 29, 1990, 104 Stat. 4808.)

REFERENCES IN TEXT

Section 226 of the Victims of Child Abuse Act of 1990, referred to in text, is classified to section 13031 of Title 42, The Public Health and Welfare.

CODIFICATION

Another section 2258 was renumbered section 2260 of this title.

§ 2259. Mandatory restitution

(a) IN GENERAL.—Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) SCOPE AND NATURE OF ORDER.—

(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) DEFINITION.—For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for—

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys' fees, as well as other costs incurred; and

(F) any other losses suffered by the victim as a proximate result of the offense.

(4) ORDER MANDATORY.—(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) DEFINITION.—For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

(Added Pub. L. 103-322, title IV, §40113(b)(1), Sept. 13, 1994, 108 Stat. 1907; amended Pub. L. 104-132, title II, §205(c), Apr. 24, 1996, 110 Stat. 1231.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-132, §205(c)(1), inserted "or 3663A" after "3663".

Subsec. (b)(1). Pub. L. 104-132, §205(c)(2)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The order of restitution under this section shall direct that—

"(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court, pursuant to paragraph (3); and

"(B) the United States Attorney enforce the restitution order by all available and reasonable means."

Subsec. (b)(2). Pub. L. 104-132, §205(c)(2)(B), struck out "by victim" after "Enforcement" in heading and amended text generally. Prior to amendment, text read as follows: "An order of restitution may also be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action."

Subsec. (b)(4)(C), (D). Pub. L. 104-132, §205(c)(2)(C), struck out subpars. (C) and (D), which related to court's consideration of economic circumstances of defendant in determining schedule of payment of restitution orders, and court's entry of nominal restitution awards where economic circumstances of defendant do not allow for payment of restitution, respectively.

Subsec. (b)(5) to (10). Pub. L. 104-132, §205(c)(2)(D), struck out pars. (5) to (10), which related, respectively, to more than 1 offender, more than 1 victim, payment schedule, setoff, effect on other sources of compensation, and condition of probation or supervised release.

Subsec. (c). Pub. L. 104-132, §205(c)(3), (4), redesignated subsec. (f) as (c) and struck out former subsec. (c) relating to proof of claim.

Subsecs. (d), (e). Pub. L. 104-132, §205(c)(3), struck out subsecs. (d) and (e) which read as follows:

"(d) MODIFICATION OF ORDER.—A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.

"(e) REFERENCE TO MAGISTRATE OR SPECIAL MASTER.—The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court."

Subsec. (f). Pub. L. 104-132, §205(c)(4), redesignated subsec. (f) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-132 effective, to extent constitutionally permissible, for sentencing pro-

ceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104-132, set out as a note under section 2248 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1593, 3563, 3613, 3664 of this title.

§ 2260. Production of sexually explicit depictions of a minor for importation into the United States

(a) **USE OF MINOR.**—A person who, outside the United States, employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor with the intent that the minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, intending that the visual depiction will be imported into the United States or into waters within 12 miles of the coast of the United States, shall be punished as provided in subsection (c).

(b) **USE OF VISUAL DEPICTION.**—A person who, outside the United States, knowingly receives, transports, ships, distributes, sells, or possesses with intent to transport, ship, sell, or distribute any visual depiction of a minor engaging in sexually explicit conduct (if the production of the visual depiction involved the use of a minor engaging in sexually explicit conduct), intending that the visual depiction will be imported into the United States or into waters within a distance of 12 miles of the coast of the United States, shall be punished as provided in subsection (c).

(c) **PENALTIES.**—A person who violates subsection (a) or (b), or conspires or attempts to do so—

(1) shall be fined under this title, imprisoned not more than 10 years, or both; and

(2) if the person has a prior conviction under this chapter or chapter 109A, shall be fined under this title, imprisoned not more than 20 years, or both.

(Added Pub. L. 103-322, title XVI, §160001(a), Sept. 13, 1994, 108 Stat. 2036, §2258; renumbered §2260, Pub. L. 104-294, title VI, §601(i)(1), Oct. 11, 1996, 110 Stat. 3501.)

AMENDMENTS

1996—Pub. L. 104-294 renumbered section 2258, relating to production of sexually explicit depictions of minor, as this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2253, 2254, 2255, 3486 of this title; title 42 section 13032.

CHAPTER 110A—DOMESTIC VIOLENCE AND STALKING

Sec.	
2261.	Interstate domestic violence.
2261A.	Interstate stalking.
2262.	Interstate violation of protection order.
2263.	Pretrial release of defendant.
2264.	Restitution.
2265.	Full faith and credit given to protection orders.
2266.	Definitions.

AMENDMENTS

1996—Pub. L. 104-294, title VI, §604(a)(1), Oct. 11, 1996, 110 Stat. 3506, amended analysis by inserting “Sec.” above section numbers.

Pub. L. 104-201, div. A, title X, §1069(b)(3), (c), Sept. 23, 1996, 110 Stat. 2656, inserted “AND STALKING” after “VIOLENCE” in chapter heading and added item 2261A.

§ 2261. Interstate domestic violence

(a) OFFENSES.—

(1) **TRAVEL OR CONDUCT OF OFFENDER.**—A person who travels in interstate or foreign commerce or enters or leaves Indian country with the intent to kill, injure, harass, or intimidate a spouse or intimate partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b).

(2) **CAUSING TRAVEL OF VICTIM.**—A person who causes a spouse or intimate partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b).

(b) **PENALTIES.**—A person who violates this section or section 2261A shall be fined under this title, imprisoned—

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case,

or both fined and imprisoned.

(Added Pub. L. 103-322, title IV, §40221(a), Sept. 13, 1994, 108 Stat. 1926; amended Pub. L. 104-201, div. A, title X, §1069(b)(1), (2), Sept. 23, 1996, 110 Stat. 2656; Pub. L. 106-386, div. B, title I, §1107(a), Oct. 28, 2000, 114 Stat. 1497.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-386 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows:

“(1) **CROSSING A STATE LINE.**—A person who travels across a State line or enters or leaves Indian country with the intent to injure, harass, or intimidate that person’s spouse or intimate partner, and who, in the course of or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner, shall be punished as provided in subsection (b).

“(2) **CAUSING THE CROSSING OF A STATE LINE.**—A person who causes a spouse or intimate partner to cross a